

PART IV

ADMINISTRATIVE PROCESSING OF CLAIMS, POWERS AND DUTIES OF THE ADMINISTRATIVE LAW JUDGE

D. EVALUATION AND WEIGHING OF EVIDENCE

2. ELEMENTS OF ENTITLEMENT

c. Disability

The administrative law judge must consider all relevant evidence on the issue of disability. In determining whether total disability has been established, the administrative law judge must address medical opinions that are phrased in terms of total disability, provide a medical assessment of physical abilities and/or identify exertional limitations. A description of physical limitations in performing routine tasks may be sufficient to allow the adjudicator to infer a finding of total disability. **McMath v. Director, OWCP**, 12 BLR 1-6 (1988); **DeFore v. Alabama By-Products Corp.**, 12 BLR 1-27 (1988); **Taylor v. Evans & Gambrel Co., Inc.**, 12 BLR 1-83 (1988); **Budash v. Bethlehem Mines Corp.**, 9 BLR 1-48 and 13 BLR 1-44 (1985)(en banc), *aff'd on recon.*, 9 BLR 1-104 (1986)(en banc); **DeFelice v. Consolidation Coal Co.**, 5 BLR 1-275 (1982). To do so, the administrative law judge must determine the nature of claimant's usual coal mine work and compare evidence of exertional requirements of the work with medical opinions as to the claimant's work capability. **Scott v. Mason Coal Co.**, 14 BLR 1-37 (1990)(en banc recon.); see also **Parsons v. Black Diamond Coal Co.**, 7 BLR 1-236 (1984); **Turner v. Director, OWCP**, 7 BLR 1-419 (1984); **Laird v. Alabama By-Products Corp.**, 6 BLR 1-1146 (1984).

A medical opinion that fails to supply information on physical limitations may nevertheless be relevant if it diagnoses the existence of a respiratory impairment, corroborates claimant's testimony, and conflicts with opinions of no total disability. In such case, the administrative law judge may properly consider the opinion in conjunction with the actual exertional requirements of the claimant's work. **Scott, supra**; see **Looney v. Jim Walters Resources, Inc.**, 6 BLR 1-361 (1983).

CASE LISTINGS

[adjudicator's finding of no total disability at time of death due to miner's respiratory impairment upheld based on hospital records showing miner had cancer, hypertension

and osteoarthritis; lay statements, not supported by medical evidence did not establish total disability] **Yendall v. Director, OWCP**, 4 BLR 1-467 (1982).

[error to reject medical opinion solely because it is based on non-conforming pulmonary function studies] **Casey v. Director, OWCP**, 7 BLR 1-873 (1985); **Drenning v. Delta Mining Co.**, 6 BLR 1-60 (1983).

[fact-finder may conclude that medical assessment of claimant's physical capabilities is respiratory evaluation if responsive to question concerning chronic respiratory or pulmonary disease] **Olszewski v. The Youghiogheny & Ohio Coal Co.**, 6 BLR 1-521 (1983).

[because blood gas and ventilatory studies measure different types of impairment, medical opinion of no impairment based only on pulmonary function study does not necessarily rule out existence of a pulmonary or respiratory impairment] **Sheranko v. Jones and Laughlin Steel Corp.**, 6 BLR 1-797 (1984).

[adjudicator properly found no total disability where medical opinion did not address severity of impairment nor extent of physical limitations imposed by that impairment] **Horn v. Jewell Ridge Coal Corp.**, 6 BLR 1-933 (1984); **DeFelice v. Consolidation Coal Co.**, 5 BLR 1-275 (1982); see also **Parsons v. Director, OWCP**, 6 BLR 1-272 (1983); **Parino v. Old Ben Coal Co.**, 6 BLR 1-104 (1983).

[adjudicator's discrediting of medical report because physician did not have accurate understanding that claimant's job duties as motorman included laborious manual labor affirmed] **McCune v. Central Appalachian Coal Co.**, 6 BLR 1-996 (1984).

[diagnosis of no respiratory impairment or no total disability ok even though clinical studies have qualifying results; medical opinion need not explain source of subjective complaints] **Bogan v. Consolidation Coal Co.**, 6 BLR 1-1000 (1984).

[without further medical evidence, diagnosis of carcinoma of larynx will not establish existence of totally disabling respiratory impairment] **Heaton v. Director, OWCP**, 6 BLR 1-1222 (1984).

[fact-finder properly rejected medical report finding total disability to do "normal work" for lack of work history or indication that physician was familiar with claimant's usual coal mine work] **Newland v. Consolidation Coal Co.**, 6 BLR 1-1286 (1984).

[determination of significance of even a non-qualifying test is for doctor] **Fuller v. Gibraltar Coal Corp.**, 6 BLR 1-1291 (1984); cf. **McMath v. Director, OWCP**, 12 BLR 1-6 (1988).

[fact-finder properly discredited medical reports based on pulmonary function studies

found invalid by consulting physician who reviewed the tracings, upon whose opinion fact-finder may rely] **Street v. Consolidation Coal Co.**, 7 BLR 1-65 (1984).

[opinion that miner's pulmonary disease "will undermine his efforts to perform manual labor such as coal mine work in the future," insufficient to establish total disability due to respiratory or pulmonary impairment; adjudicator's discretion to question validity of medical report based on discredited pulmonary function study where values disparately low in comparison with two later studies] **Baker v. North American Coal Corp.**, 7 BLR 1-79 (1984).

[adjudicator may rationally conclude that medical opinion regarding disability entitled to less weight in light of subsequent medical opinions or studies] **Bates v. Director, OWCP**, 7 BLR 1-113 (1984).

[test for total disability solely a medical test, not vocational; fact that miner would not be rehired does not support finding of total disability] **Ramey v. Kentland Elkhorn Coal Corp.**, 755 F.2d 485, 7 BLR 2-124 (6th Cir. 1985).

[fact-finder properly rejected medical opinion as equivocal where doctor commented that without knowing whether exercise is limiting factor, could not give opinion as to whether mild impairment disabling] **Parsons v. Black Diamond Coal Co.**, 7 BLR 1-236 (1984).

[fact-finder must compare assessments of physical limitations with exertional requirements of usual coal mine work before determining whether medical opinions conflicting] **Bartley v. L & M Coal Co.**, 7 BLR 1-243 (1984).

[adjudicator rationally found physician's diagnosis of 20% to 30% disability established "significant" respiratory impairment; based on job description, did not establish ability to perform usual coal mine work. **Conley v. Roberts and Schaefer Co.**, 7 BLR 1-309 (1984).

[adjudicator could reasonably infer no respiratory or pulmonary impairment where doctor attributed inability to work solely to arteriosclerotic heart disease/severe atherosclerosis] **White v. Director, OWCP**, 7 BLR 1-348 (1984).

[ultimate finding regarding total disability is legal determination to be made by adjudicator through consideration of exertional requirements of usual coal mine employment in conjunction with medical opinion regarding physical abilities] **Hvizdzak v. North American Coal Corp.**, 7 BLR 1-469 (1984); see also **Aleshire v. Central Coal Co.**, 8 BLR 1-70 (1985).

[x-rays generally not diagnostic of degree of impairment; must be shown that medical conclusions would have been different had later evidence been available; diagnosis of

"slight" pulmonary defects, "does not appear to have any significant chronic lung disease" supports finding that any pulmonary or respiratory impairment not totally disabling] **York v. Director, OWCP**, 7 BLR 1-641 (1985).

[if blood gas study discloses presence of impairment, adjudicator may discredit report that fails to address specific impairment] **Sweet v. Jeddo-Highland Coal Co.**, 7 BLR 1-659 (1985).

[physician may, after examining miner, rely on AMA Guides for assessing respiratory impairment in giving disability opinion; failure to consider effect of miner's respiratory impairment on usual coal mine work does not make opinion less persuasive where concluding *no* disabling respiratory impairment] **Vargo v. Valley Camp Coal Co.**, 7 BLR 1-901 (1985); **Kozele v. Rochester & Pittsburgh Coal Co.**, 6 BLR 1-378, 1-381, n.3 (1983).

[non-qualifying test results alone do not establish absence of impairment] **Estep v. Director, OWCP**, 7 BLR 1-904 (1985).

[adjudicator cannot discredit medical report that failed to state if further coal dust exposure may potentially aggravate bronchitis, affecting ability to perform usual coal mine employment] **Wheaton v. North American Coal Corp.**, 8 BLR 1-21 (1985).

[medical opinion must provide assessment of miner's impairment or physical limitations to show ability for general work] **Aleshire v. Central Coal Co.**, 8 BLR 1-70 (1985); **Stanley v. Eastern Asso. Coal Corp.**, 6 BLR 1-1157 (1984); **Moore v. Hobet Mining & Const. Co.**, 6 BLR 1-706 (1983).

[fact-finder may not reject medical opinion solely because record contains later qualifying studies] **Merashoff v. Consolidation Coal Co.**, 8 BLR 1-105 (1985); **Strunk v. Monarch Coal Inc.**, 7 BLR 1-49 (1984); *cf.* **McMath v. Director, OWCP**, 12 BLR 1-6 (1988).

["no significant impairment" diagnosis supports finding of no compensable impairment and need not be discussed in terms of former job duties] **Wetzel v. Director, OWCP**, 8 BLR 1-139 (1985).

[adjudicator properly found medical assessment of claimant's respiratory impairment as mild established no total disability] **King v. Cannelton Industries, Inc.**, 8 BLR 1-146 (1985); **Massey v. Eastern Associated Coal Corp.**, 7 BLR 1-37 (1984); **Moore v. Hobet Mining & Construction Co.**, 6 BLR 1-706 (1983).

[test results that exceed applicable table values may be relevant to overall evaluation of claimant's condition if physician states that they show values indicative of reduced pulmonary function] **Marsiglio v. Director, OWCP**, 8 BLR 1-190 (1985).

[adjudicator, unable to determine if documentation supported doctor's pre-printed conclusion, acted within discretion finding medical report insufficiently reasoned to support total disability] **Hall v. Director, OWCP**, 8 BLR 1-193 (1985).

[adjudicator may properly find total disability in reliance on medical opinion containing non-qualifying blood gas and pulmonary function studies where physician indicated blood gas study showed overaeration, precluding possibility of work, and pulmonary function study of no value "as demonstrated by a careful history and x-ray." **Smith v. Director, OWCP**, 8 BLR 1-258 (1985).

DIGESTS

The Board concluded that the administrative law judge totally mischaracterized a physician's deposition testimony in finding that the physician failed to consider a qualifying blood gas study while finding that claimant was not totally disabled. The Board noted that the physician excluded the blood gas study only as a factor in measuring the severity of claimant's chronic bronchitis. **Schoenecker v. Allegheny River Mining Co.**, 8 BLR 1-501 (1986).

Doctor's advice that while claimant had x-ray evidence of anthracosilicosis, he demonstrated no evidence of obstructive or restrictive lung disease constitutes substantial evidence from which the administrative law judge could conclude that claimant's anthracosilicosis is not disabling. **Minnich v. Pagnotti Enterprises, Inc.**, 9 BLR 1-89 (1986).

A physician's opinion that claimant's respiratory condition appears to be moderately to totally disabling and that his disability for coal mine employment depends upon the amount of coal dust exposure is too equivocal to constitute substantial evidence of total disability. **Snorton v. Zeigler Coal Co.**, 9 BLR 1-106 (1986).

Administrative law judge erred in relying upon Dictionary of Occupational Titles to determine that claimant's usual coal mine employment was heavy labor as the Dictionary was not contained in the transcript of testimony, either directly or by appropriate reference. **Snorton v. Zeigler Coal Co.**, 9 BLR 1-106 (1986).

Where a doctor diagnosed only pneumoconiosis, and the doctor listed extensive physical limitations on a form which requested the doctor to list limitations that may be due to pulmonary disease, the Board held that the administrative law judge irrationally rejected the medical report as not probative of total disability under 20 C.F.R. §718.204. **Mazgaj v. Valley Camp Coal Co.**, 9 BLR 1-201 (1986).

When claimant receives a lighter job as a result of his inability to perform his prior, more demanding job, the less strenuous position should not be considered his usual coal mine employment. **Mazgaj v. Valley Camp Coal Co.**, 9 BLR 1-201 (1986).

The administrative law judge erred in finding that a 30% impairment constitutes total respiratory disability without first assessing the physical requirements of claimant's usual coal mine employment. **Fields v. Island Creek Coal Co.**, 10 BLR 1-19 (1987).

Administrative law judge may not discredit doctor's report relevant to disability because administrative law judge does not credit x-ray upon which doctor partially relied. **McMath v. Director, OWCP**, 12 BLR 1-6 (1988); **Coen v. Director, OWCP**, 7 BLR 1-30 (1984).

Medical opinions which advise against further coal dust exposure, and fail to address claimant's physical capacity to do his usual coal mine employment, do not establish total disability, **Justice v. Island Creek Coal Co.**, 11 BLR 1-91 (1988); **DeFore v. Alabama By-Products Corp.**, 12 BLR 1-27 (1988). **Taylor v. Evans & Gambrel Co., Inc.**, 12 BLR 1-83 (1988).

Board found that administrative law judge erred in failing to weigh a doctor's opinion regarding total disability where opinion stated that claimant could not do work comparable to his usual coal mine work and also reported physical limitations, **Marsiglio v. Director, OWCP**, 8 BLR 1-190 (1985). **McMath v. Director, OWCP**, 12 BLR 1-6 (1988); **DeFore v. Alabama By-Products Corp.**, 12 BLR 1-27 (1988); **Taylor v. Evans and Gambrel Co., Inc.**, 12 BLR 1-83 (1988); **Budash v. Bethlehem Mines Corp.**, 9 BLR 1-48 and 13 BLR 1-44 (1985)(en banc), *aff'd on recon.*, 9 BLR 1-104 (1986)(en banc).

A medical conclusion that the miner "should not return to underground mining" because of his pneumoconiosis is not sufficient to establish that the miner is totally disabled. **Zimmerman v. Director, OWCP**, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989).

Administrative law judge must determine whether statements made in doctor's reports constitute an assessment of physical limitations that must be compared to the exertional requirements of claimant's usual coal mine employment or are merely a narrative of claimant's symptoms which are insufficient to establish total disability under Section 727.203(a)(4). **McMath v. Director, OWCP**, 12 BLR 1-6 (1988); see also **Scott v. Mason Coal Co.**, 14 BLR 1-37 (1990)(en banc recon.).

Administrative law judge must compare a doctor's opinion regarding claimant's physical ability with claimant's testimony regarding the exertional requirement of his usual coal mine employment. **Scott v. Mason Coal Co.**, 14 BLR 1-37 (1990)(en banc recon.).

The Board rejected employer's argument that, in light of the decision of the United States Court of Appeals for the Sixth Circuit in ***Cornett v. Benham Coal, Inc.***, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000), the administrative law judge erred in crediting the opinions of two physicians who failed to indicate that they were aware of the exertional requirements of claimant's job as a roof bolter. The Board distinguished the medical opinions held to be improperly credited in ***Cornett***, noting that those doctors' opinions, upon which the administrative law judge relied to find that the miner was not totally disabled, were opinions indicating that claimant had a mild impairment or no impairment. The Board noted that, in the instant case, the credited opinions differed in that they indicated that claimant had a totally disabling pulmonary impairment. The Board held that the administrative law judge's reliance upon such opinions is not proscribed by ***Cornett***. ***Chaffin v. Peter Cave Coal Co.***, BLR , BRB No. 02-0643 BLA (June 17, 2003).

07/03